

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.)
)
 EDUARDO RODRIGUEZ)

Criminal No. 04-10374-DPW

**DEFENDANT'S MOTION FOR ORDER TO PRESERVE
AUDIO AND VIDEO TAPES**

Defendant Eduardo Rodriguez hereby moves for an order directing the Brockton Police Department to preserve; all turret tapes, 911 calls, radio communications between the dispatcher and police cars and radio transmissions between police cars that relate to the report of a domestic violence incident at 5 Moreland Street, Brockton, Massachusetts on or about August 28, 2004 at 3:30 am and the search for, arrest and booking of Mr. Rodriguez, and the search of his apartment on or about August 28, 2004 at 4:50 am; and all audio and video tapes that depict Mr. Rodriguez at all times from the moment the police arrived at the place of his arrest through his booking.

As grounds for this motion, Mr. Rodriguez states that the requested audio tapes contain relevant information including the contemporaneous statements of witnesses and police officers. The audio tapes can provide valuable impeachment information should witnesses and police officers ultimately give testimony that differs from their prior recorded statements.

Video tapes depicting Mr. Rodriguez would show his custody status, physical condition, demeanor and possibly his state of sobriety. These tapes, made at the time of the events for which Mr. Rodriguez stands accused his alleged post-arrest statements, could provide valuable evidence that would go to the legality of the warrantless search on

which the government's case is based and the voluntariness of Mr. Rodriguez's statements.

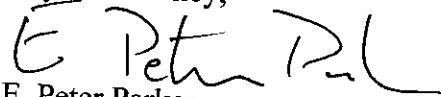
To the extent that the audio and video tapes described above contain recorded statements of Mr. Rodriguez and potential government witnesses, the government is obligated to disclose them automatically and/or eventually. *See Local Rule 116.1(C)(1)(a); Jencks Act, 18 U.S.C. § 3500.*

It is the experience of undersigned counsel that the police departments use equipment that ultimately tapes over existing used audio and video tape. There is a danger that without an order from the court directing the preservation of the requested tapes as to Mr. Rodriguez, they will be taped over and lost forever.

For all of the foregoing reasons, Mr. Rodriguez requests that the court order the Brockton Police to preserve the audio and video tapes described above.

EDUARDO RODRIGUEZ

By his attorney,



E. Peter Parker

B.B.O. #552720

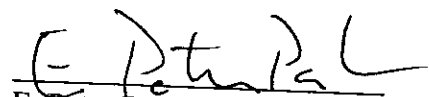
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Certificate of Service

I, E. Peter Parker, certify that I served a copy of this pleading on AUSA Robert Richardson on April 25, 2005.


E. Peter Parker